SAUJANA TRIANGLE SDN BHD v. ARMANEE TERRACE JOINT MANAGEMENT BODY & ORS

COURT OF APPEAL, PUTRAJAYA
RAVINTHRAN PARAMAGURU JCA
COLLIN LAWRENCE SEQUERAH JCA
LIM HOCK LENG JCA
[CIVIL APPEAL NO: B-02(NCC)(W)-1627-08-2022]
30 OCTOBER 2025

Abstract – *A joint management body and its members may be held liable for the tort of conspiracy to injure by unlawful means if they collectively obstruct or restrict a developer's access to part of the development, even if within the same master title and development order, without legal or proprietary basis, knowing that such obstruction will inevitably cause the developer financial loss, such as liquidated ascertained damages due to delayed completion and delivery of vacant possession.*

STRATA PROPERTY: *Joint management body – Claim – Claim by developer against joint management body ('JMB') – Unlawful interference in economic interests, conspiracy to injure by unlawful means and breach of statutory duties – JMB caused obstruction to one block which provided access to another block – Obstruction restricted developer's access to complete utility works – Obstruction caused delay by developer in handing over vacant possession – Claim by purchasers for liquidated ascertained damages – Whether claims by developer against JMB established*

The appellant was the developer of the Armanee Terrace Condominium ('ATC') which comprised Blocks A and B. Block A was completed in December 2005 but there was delay in handing over vacant possession of Block B as the utility works could not be completed timeously. Block A provided the only access to Block B; the road system approved by the city council assigned a single entrance/exit for the project through Block A. According to the appellant, (i) the delay was caused by the respondents, the joint management body ('JMB') of the ATC and its members, who were managing Block A and obstructed the only access to Block B, thus impeding the contractor in its utility works; (ii) although vacant possession of the Block B units was scheduled to be delivered in December 2014, it was only able to deliver vacant possession to the buyers of Wings A, B and C units of Block B in May 2016, June 2016 and August 2016, respectively; and (iii) as a result, it had to pay liquidated ascertained damages ('LAD') for late delivery of vacant possession. This prompted the appellant to commence an action,

A at the High Court, against (i) the respondents for unlawful interference in the appellant's economic interests and conspiracy to injure by unlawful means; and (ii) the first respondent, *ie*, the JMB, for breach of statutory duty as it failed to carry out its duties under the Strata Management Act 2013. The High Court dismissed the action. Hence, the present appeal.

B **Held (allowing appeal; setting aside decision of High Court)**
Per Lim Hock Leng JCA delivering the judgment of the court:

(1) From the respondents' pleadings and the evidence, it could readily be seen that they agreed or combined to collectively deny or restrict access to the appellant's contractor, *albeit* on the basis that they were not provided certain documents. Further, the justification for restricting the access to and through Blocks A and B was without legal basis. The means used by the respondents were unlawful as they had no proprietary or other basis to restrict access to Block B, which was as much a part of the ATC development as was Block A, the two buildings being within one master title and one development order. The first respondent was a creation of statute and did not have powers going beyond the prescribed responsibilities of management and maintenance of buildings and extending to the restriction of access to the land by the appellant in its capacity as developer. (paras 50-51 & 58-59)

(2) The respondents knew the appellant was under a contractual obligation to deliver vacant possession to purchasers of the Block B units and that any delay beyond the contractual deadline would result in a breach of the sale and purchase agreements ('SPAs') with exposure to LAD payments. The purchasers of Block A executed SPAs with the appellant which set a timeframe for delivery of vacant possession and, in default, the LAD. They knew that without the installation of utility works, vacant possession could not be delivered. Furthermore, there was no evidence that the SPAs executed between the appellant and the purchasers of the Block B units were any different in those material respects. The respondents either had actual knowledge or were reckless as to the inevitable consequences of their obstructive acts. The essential element of intention – which need not be predominant in a suit premised on unlawful means conspiracy – had been made out. (paras 68 & 69)

(3) There was no specific statutory duty on the respondents which had been breached. The statutory duties listed would only arise upon or after the delivery of vacant possession. There was no need to consider whether a private cause of action lay for the breach of statutory duties. (paras 80 & 81)

(4) Although the appellant was unable to prove the actual extent of its loss and damage, it had established that its rights had clearly been infringed by the respondents. The appellant was awarded nominal damages of RM10,000. (para 109)

Case(s) referred to:

Abdul Ravuff Datuk AS Dawood & Ors v. Dr Abdul Rahiman Datuk AS Dawood & Other Appeals [2022] 5 CLJ 829 FC ***(refd)***

Amity One Sdn Bhd v. Binjai Residency Management Corporation [2021] CLJU 189; [2021] 1 LNS 189 HC ***(refd)***

Ang Game Hong & Anor v. Tee Kim Tiam & Ors [2018] CLJU 2008; [2018] 1 LNS 2008 CA ***(refd)***

Appsmiths Sdn Bhd v. Jason Kok Chin Hwa & Ors [2024] CLJU 2197 HC ***(refd)***

Asia Commercial Finance (M) Bhd v. Kawal Teliti Sdn Bhd [1995] 3 CLJ 783 SC ***(refd)***

Cubic Electronic Sdn Bhd (In Liquidation) v. MKC Corporate & Business Advisory Sdn Bhd & Another Appeal [2016] 3 CLJ 676 CA ***(refd)***

Datuk Mohd Ali Hj Abdul Majid & Anor v. Public Bank Bhd [2014] 6 CLJ 269 FC ***(refd)***

Douglas And Others v. Hello Ltd And Others (No 3) [2006] 1 QB 125 ***(refd)***

EFT Holdings, Inc And Another v. Marinteknik Shipbuilders (S) Pte Ltd & Another [2013] SGCA 64 ***(refd)***

Gan Yook Chin & Anor v. Lee Ing Chin & Ors [2004] 4 CLJ 309 FC ***(refd)***

H & R Johnson (Malaysia) Bhd v. H & R Johnson Tiles Limited & Anor [1995] 2 CLJ 581 HC ***(refd)***

Hu Sepang v. Inspector Keong On Eng & Ors [1991] 2 CLJ 999; [1991] 2 CLJ (Rep) 739 HC ***(refd)***

Lonrho Plc v. Fayed & Others [1991] 3 All ER 303 ***(refd)***

Malaysian Rubber Development Corporation Bhd v. Glove Seal Sdn Bhd [1994] 4 CLJ 783 SC ***(refd)***

Megnaway Enterprise Sdn Bhd v. Soon Lian Hock (No 2) [2009] 8 CLJ 130 HC ***(refd)***

MMC Oil & Gas Engineering Sdn Bhd v. Tan Bock Kwee & Sons Sdn Bhd [2016] 4 CLJ 665 CA ***(refd)***

Racing Partnership Ltd v. Done Bros Ltd [2021] 2 WLR 469 ***(refd)***

Tengku Dato' Ibrahim Petra Tengku Indra Petra v. Petra Perdana Bhd & Another Appeal [2018] 2 CLJ 641 FC ***(refd)***

Torquay Hotel Co Ltd v. Cousins & Ors [1969] 2 Ch 106 ***(refd)***

Legislation referred to:

Strata Management Act 2013, ss. 7, 21(a), (e), (i)

For the appellant - Prem Ramachandran & Craig Ho Wai Ping; M/s Kumar Partnership
For the respondents - Selvarajah Sivalingam & Joseph Tan Pin Ren; M/s Fernandez & Selvarajah

[Editor's note: Appeal from High Court, Shah Alam; Civil Court No: BA-22NCC-45-04-2019 (overruled).]

Reported by Najib Tamby

A

JUDGMENT

Lim Hock Leng JCA:

Introduction

B **[1]** The appellant, a member of the MK Land group of companies, is the developer of a luxury condominium project in Damansara Perdana, Selangor. The project, Armanee Terrace Condominium ("ATC"), comprised of Block A (522 units) and Block B (518 units).

[2] Block A and Block B were interchangeably referred to as Tower A and Tower B, as well as ATC1 and ATC2, during the trial.

C

[3] The first respondent is the joint management body ("JMB") of ATC. It was set up in 2008 under the Building and Common Property (Maintenance and Management) Act 2007 which was subsequently replaced by the Strata Management Act 2013.

D **[4]** The second respondent was the chairman of the joint management body ("JMB") from June 2012 to September 2018.

[5] The third to eighth respondents were members of the JMB between 2013 to 2017.

E **[6]** Block A was completed on 8 December 2005. Block B was supposed to be completed in 2008, but there was delay by the original contractor who was replaced.

[7] Following the engagement of the new contractor, there was physical completion of Block B in 2014 but there was delay in handing over vacant possession as the utility works could not be completed timeously.

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[8] Block A provided the only access to Block B. The road system approved by the Majlis Bandaraya Petaling Jaya was assigned a single entrance/exit for the project through Block A.

G **[9]** The appellant says the delay was caused by the respondents who were managing Block A, and obstructed the only access to Block B, thus impeding the contractor in its utility works.

[10] The appellant further says that although vacant possession of the Block B units was scheduled to be delivered in December 2014, it was only able to deliver vacant possession to the buyers of the wings A, B and C units of Block B on 20 May 2016, 20 June 2016 and in August 2016 respectively. See ROA, vol. 6, p. 112, SOC, para. 23.

H

[11] The appellant complained that, as a result, it had to pay liquidated ascertained damages ("LAD") for late delivery of vacant possession.

I

[12] The appellant sued all the respondents for (i) unlawful interference in the appellant's economic interests; and (ii) conspiracy to injure by unlawful means.

[13] As against the first respondent/JMB on its own, the appellant's cause of action was premised on breach of statutory duty. The appellant claimed that the first respondent had failed to carry out its duties and obligations under the Strata Management Act 2013.

[14] In elaboration, learned counsel for the appellant differentiated the time frame and nature of the tortious acts into two stages.

[15] The first stage of interference (2013-2015) concerned the restriction of access from Block A to Block B which impeded the infrastructure/utility works and resulted in liability to LAD crystallising later.

[16] The second stage of interference (2016-2017) was at Block B, where access was restricted, hindering the sale and letting of the units there.

Timeline Of Events In The Dispute

[17] To give context to the dispute, it is necessary to set out a timeline of events leading up to the action.

[18] On 15 March 2013, the appellant wrote to the first respondent, referring to its discussion with members of the JMB concerning structural assessment, leakages, and the jogging track of Block A. A copy of the block title, showing Blocks A and B as part of ATC, was appended.

[19] On 6 December 2013, the appellant wrote to the first respondent proposing a co-ordination meeting on 12 December 2013 to discuss the connection of services such as electrical supply, cabling connection from Block A to Block B LV room, telephone and broadband services (manhole duct connection to Block B), the connection of the sub main water pipe and fire hydrant piping system from Block A to Block B, and other utility works. The proposed meeting did not take place. The first respondent maintained its stand that while the appellant wanted to reach 90% completion, its focus, as the JMB, was to protect the interest of residents in Block A which included security and use of the facilities.

[20] By the end of 2013, the appellant indicated that it would seek assistance from the commissioner of buildings ("COB") if the JMB did not change its stand.

[21] The appellant subsequently referred the matter to the COB which, by letter dated 3 July 2014, wrote to the first respondent, asking it to extend its full co-operation and to permit the appellant's contractor to go through Block A to complete the infrastructure works for Block B. The first respondent declined to do so, as the appellant had failed to extend copies of the documents it had previously required.

[22] On 14 July 2014, the appellant gave notice to the first respondent that they would be commencing daily work for the connection of utilities and infrastructure which had been approved by the authorities from 9.30am to 4.30pm, starting from 21 July 2014.

[23] On 18 July 2024, in response to the first respondent's letter dated 10 June 2024, the appellant provided a copy of the development order/approval for Block A and Block B, the consultants' reports on infrastructure connection works, confirmation from consultants that the infrastructure of Block A would not be affected by Block B, certificate of fitness for occupation of Block A, the planned safety measures during the infrastructure connection works, and copies of insurance policies. The appellant stated that they were once again providing all as-built drawings for Block A, and a copy of the single title including Block A and B.

[24] As described by the learned trial judge ("LTJ"), there was a temporary hoarding or fence which had been put up between Block A and Block B which blocked access to the latter. The appellant tried to dismantle the barrier in the presence of police personnel, but residents of Block A formed a human barricade to prevent the dismantling.

[25] It was thus the dispute heated up, with both sides filing actions against each other.

[26] The appellant filed OS No. B54-16-07/2014 ("OS-16-2014") against the JMB on 30 July 2014 wherein (i) an *ex parte* injunction to compel the JMB to allow its access to carry out infrastructure/utility works, and an order in terms of the OS were granted (affirmed by the High Court); while (ii) the JMB was granted an order for the appellant to cease works at Block B, but that stop-work order was set aside by the High Court on appeal, on 30 July 2015.

[27] In turn, Nidthianandan a/l Rajasingam and Rupa a/p Thurai Singham (residents of Block A, in a representative capacity for the other residents) and the JMB took out Suit No. 21 NCVC-33-09/2014 ("Suit 33-09/2014") against Saujana Triangle Sdn Bhd (the appellant in the present proceedings), the COB and the Director of Lands and Mines, Selangor, on 30 September 2014. Those appellants sought an injunction to restrain Saujana Triangle Sdn Bhd from entering Block A. They also sought, *inter alia*, a declaration that, on a true construction of the sale and purchase agreements between Saujana Triangle Sdn Bhd and the purchasers of units of Block A, "the development of ATC1 is separate and distinct from that of ATC2". Suit 33-2014 was dismissed on 30 September 2015. Both JMB appeals to the Court of Appeal and its application for leave to appeal to the Federal Court were dismissed in 2016.

[28] The next case, Suit No. 22 NCVC-354-06/2015, filed in the Shah Alam High Court by the JMB, concerned the issue of whether the four shop lots in the sports complex formed part of the common property. It was dismissed, as was the appeal. The core dispute in that action has no material bearing on the outcome of the appeal at hand.

[29] Thereafter, the developer/appellant here took out a suit against the JMB in the Shah Alam High Court *vide* Suit No. BA-B52-29-10/2017. The developer sued as the purchaser of 96 units to which it was denied access and sought a declaration for unrestricted entry to those units, injunctive relief, provision of access cards, transponders and damages for loss of business. The *ex parte* order which was granted to the developer on 10 October 2017 was affirmed when it was heard *inter parte* on 21 December 2017. Subsequently, the parties entered into a consent order on 7 August 2018.

Decision Of The High Court

[30] The LTJ accepted/made findings that the Armanee Terrace Condominium project comprises Block A and Block B, with Block A providing the sole access to Block B, vacant possession could only be delivered when the infrastructure/utility works were completed: the respondents took action to prevent the appellant's contractor from accessing Block A to carry out the necessary utility works at Block B. There was agreement among the respondents to take such action, and there was delay in handing over vacant possession of Block B units, as a result of which the appellant had to pay LAD.

[31] However, the LTJ held that the appellant had failed to prove that respondents were liable for the torts of conspiracy and/or unlawful interference, *viz*, the respondents' acts in restricting access of the appellant's contractor to Block A and Block B were carried out without intention to cause loss and damage to the appellant.

[32] The LTJ also held that there was no breach of statutory duty because, in carrying out the impugned actions, the first respondent was prioritising the interests of Tower A and its residents, at a time when Block B was unoccupied.

[33] It was further held that the appellant's claims were defeated by the principle of *res judicata*.

[34] The LTJ accordingly dismissed the action which was tried over 11 days across 2020-2021, and ordered the appellant to pay costs of RM80,000 to the first respondent and costs of RM40,000 to the second to eighth respondents, with both sets of costs subject to payment of the allocatur fee.

A **Whether The High Court Was Plainly Wrong**

[35] In considering the appeal, we are mindful of the guiding principle set by the Federal Court that appellate interference is only warranted when the lower court is plainly wrong, such as when its decision "could not reasonably be explained or justified" and is one "which no reasonable judge could have
B reached" (see *Tengku Dato' Ibrahim Petra Tengku Indra Petra v. Petra Perdana Bhd & Another Appeal* [2018] 2 CLJ 641; [2018] 2 MLJ 177) or where there has been "a lack of judicial appreciation of the evidence" (see *Gan Yook Chin & Anor v. Lee Ing Chin & Ors* [2004] 4 CLJ 309; [2005] 2 MLJ 1 and *Abdul Ravuff Datuk AS Dawood & Ors v. Dr Abdul Rahiman Datuk*
C *AS Dawood & Other Appeals* [2022] 5 CLJ 829).

[36] In *MMC Oil & Gas Engineering Sdn Bhd v. Tan Bock Kwee & Sons Sdn Bhd* [2016] 4 CLJ 665; [2016] 2 MLJ 428, the principle was expressed by the Court of Appeal through Nallini Pathmanathan JCA (as Her Ladyship then was) in the following manner:

D

> A first instance judgment is open to challenge when it fails to address or wholly ignores material evidence or issues placed before it, or when bald findings of fact are made with no reasoning or evidence to substantiate such findings. Equally errors of law, a dear misunderstanding of relevant evidence and such clearly identifiable errors will all contribute towards a
E decision that would be considered to be 'plainly wrong'.

Unlawful Interence With Business, And Conspiracy

[37] We begin with an examination of the essential elements of the two economic torts which form part of the appellant's case.

F **[38]** In *Megnaway Enterprise Sdn Bhd v. Soon Lian Hock (No 2)* [2009] 8 CLJ 130, Low Hop Bing J, drawing on *Bullen & Leake & Jacob's Precedents of Pleadings* [1990] p. 464, set out the elements constituting the tort of unlawful interference with trade or business: (i) interference with the plaintiff's trade or business; (ii) unlawful means; (iii) intention to injure the plaintiff; and
G (iv) the plaintiff is injured thereby.

[39] As for the tort of conspiracy, the Court of Appeal in *Cubic Electronic Sdn Bhd (In Liquidation) v. MKC Corporate & Business Advisory Sdn Bhd & Another Appeal* [2016] 3 CLJ 676, had occasion to hold that a claimant must establish "(i) a combination or agreement between two or more individuals,
H (ii) an intent to injure; (iii) pursuant to which combination or agreement, and with that intention, certain acts were carried out; and (iv) resulting loss and damage to the claimant".

[40] In respect of the tort of conspiracy, there is the lawful means conspiracy that entails a combination or agreement to carry out acts which,
I although not themselves *per se* unlawful, are done with the predominant purpose of injuring the claimant. The appellant's pleaded case does not fall into this category.

[41] Then there is the unlawful means conspiracy category where the conspirators combine or agree to carry out acts which are unlawful under either criminal or civil law.

[42] The distinction was explained by Lord Bridge in *Lonrho Plc v. Fayed & Others* [1991] 3 All ER 303, and cited with approval in *Cubic Electronic* (*supra*), as follows:

> Where conspirators act with the predominant purpose of injuring the plaintiff and in fact inflict damage on him, but do nothing which would have been actionable if done by an individual acting alone, it is in the fact of their concerted action for that illegitimate purpose that the law, however anomalous it may now seem, finds a sufficient ground to condemn their action as illegal and tortious. But when conspirators intentionally injure the plaintiff and use unlawful means to do so, it is no defence for them to show that their primary purpose was to further or protect their own interests; it is sufficient to make their action tortious that the means used were unlawful.

[43] While the appellant highlighted the LTJ's finding that the respondents had obstructed their contractor from entering Block A and obstructed it from carrying out the infrastructure/utility-related works, the respondents argued that liability could not be visited upon them as the identity of all the alleged tortfeasors and their particular acts could not be pinpointed.

[44] On our part, we are of the view that it does not matter. The first to eighth respondents were correctly named as they were the decision-makers on whether to grant, deny or restrict access to the appellant.

[45] It suffices if the parties to the conspiracy are "sufficiently aware of the surrounding circumstances and share the same object for it properly to be said that they are acting in concert. The question in relation to any particular scheme or enterprise in which only one or some of the alleged conspirators can be shown to have directly participated is whether that enterprise fell within the overall scope of their common design". See *Lonrho Plc* (*supra*).

[46] Indeed, the respondents' pleaded case acknowledges that they had restricted the appellant's access to carry out infrastructure/utilities works at Block B.

[47] In the first respondent's amended defence, in para. 28(c), it is pleaded: "If the JMB and/or the first defendant had allowed the plaintiff and/or its contractors to access the utilities for the infrastructure works, without first conducting the requisite verification, of the approved plans, the JMB and/or the first defendant could have been made liable and/or could have been seen to be in breach of duties and/or seen to be negligent by the proprietors of the occupied Block A at the time ...".

[48] In the second to eighth respondents' amended defence, in para. 18, it is pleaded: "... the plaintiff was rejected request for access by the respondents as the plaintiff had failed to provide certain documents that were requested by the respondents".

[49] These averments show that the respondents had agreed to or acted in concert to deny or restrict access to the appellant's contractor, regardless of whether there were other individuals involved and whether interrogatories were filed to ascertain the identity of others who may have been involved.

[50] The respondents' own pleaded case undermines their submission that the appellant's claim of conspiracy is unsustainable because the appellant cannot identify with sufficient particularity who among the third to eighth respondents entered into a combination with the first and second respondents. From the respondents' pleading and the evidence, it can be readily seen that they had agreed or combined to collectively deny or restrict access to the appellant's contractor, *albeit* on the basis that they were not provided certain documents.

[51] That aside, the purported justification for restricting access to and through Block A to Block B is without legal basis, more so as the COB decision was not conditional on the provision of any document.

[52] In any event, on 18 July 2014, the appellant had provided the documents, as mentioned earlier.

[53] That brings us to the issue – predicated on both torts of unlawful interference with business and conspiracy to injure by unlawful means which form part of the appellant's pleaded case – whether there were unlawful means used by the respondents, coupled with an intention to injure.

[54] When the LTJ held that the respondents had carried out acts to prevent the appellant's contractor from accessing Block A and directly obstructed its infrastructure/utility – related work in Block B (see paras. 21 and 30 of the grounds of judgment), he omitted to consider whether they had used unlawful means to restrict access.

[55] Instead, the LTJ held that whatever action taken by the first respondent as the JMB and the individual respondents as its office bearers was to prioritise the interests of Block A and its residents. The learned LTJ equated that to an absence of intention whereas actual knowledge or recklessness as to loss or damage to a claimant suffices in an unlawful means conspiracy; for that tort, the claimant need not show a predominant intention by the defendant to cause damage or loss.

[56] As held by Lord Bridge in *Lornho* (*supra*): "But when conspirators intentionally injure the plaintiff and use unlawful means to do so, it is no defence for them to show that their primary purpose was to further or protect their own interests; it is sufficient to make their action tortious that the means used were unlawful".

[57] The reasoning has been adopted in *Racing Partnership Ltd v. Done Bros Ltd* [2021] 2 WLR 469, where the Court of Appeal of England and Wales, delivering its decision through Arnold LJ, observed: "It was common ground at trial that liability in the tort of unlawful means conspiracy required at least the following: (i) a combination between two or more people, (ii) concerted action pursuant to that combination which is unlawful, (iii) an intention to injure the claimant (which need not be the predominant purpose, it being sufficient that the conspirators seek a benefit at the claimant's expense) and (iv) damage to the claimant". See also *Appsmiths Sdn Bhd v. Jason Kok Chin Hwa & Ors* [2024] CLJU 2197, para. 53(ii), a decision of the High Court of Malaya at Kuala Lumpur.

[58] The means used by the respondents were unlawful, as they had no proprietary or other basis to restrict access to Block B which is as much a part of the ATC development as is Block A, the two buildings being within one master title and one development order.

[59] The first defendant, as the JMB, is a creation of statute *vide* the Building and Common Property (Maintenance and Management) Act 2007/ Strata Management Act 2013, and thus did not have powers going beyond the prescribed responsibilities of management and maintenance of the buildings, and extending to the restriction of access to the land by the appellant in its capacity as developer.

[60] In addition, the respondents' said acts demonstrated wilful disregard of the COB's directions *vide* its letter of 3 July 2024, as well as the orders of the Sessions Court in OS 16-2014, considering the Shah Alam High Court's decision in Suit 354-2015 that the sale and purchase agreements cannot be interpreted to mean that the construction of Block A is separate from Block B.

[61] As concerns the tort of unlawful interference with the plaintiff's business or economic interests, it was held by Zakaria Yatim (as His Lordship then was) in *H & R Johnson (Malaysia) Bhd v. H & R Johnson Tiles Limited & Anor* [1995] 2 CLJ 581: "... If one person deliberately interferes with the trade or business of another, and does so by unlawful means, that is, by an act which he is not at liberty to commit, then he is acting unlawfully even though he does not procure to induce any actual breach of contract: *Torquay Hotel Co Ltd v. Cousins & Ors* [1969] 2 Ch 106, 139 per Lord Denning MR".

[62] There is no good reason why the test for "unlawful means" in that class of economic torts is not equally applicable to the tort of unlawful means conspiracy.

[63] Moving on, there are aspects relating to knowledge which ought to be highlighted.

[64] In *Racing Partnership Ltd* (*supra*), at para. 139, the Court of Appeal in England and Wales held that "knowledge of the unlawfulness of the means employed is **not** required for unlawful means conspiracy (emphasis added)".

[65] In *EFT Holdings, Inc And Another v. Marinteknik Shipbuilders (S) Pte Ltd & Another* [2013] SGCA 64, the Singapore Court of Appeal agreed with the observation by Lord Philips MR in *Douglas And Others v. Hello Ltd And Others (No 3)* [2006] 1 QB 125 that "there is an important conceptual and factual difference between a tort, like negligence or breach of duty, which requires merely that the loss or damage should be reasonably foreseeable and a tort, which requires actual knowledge (or subjective recklessness) as to the consequences such as the tort of unlawful means conspiracy".

[66] The respondents knew of the COB decision, and the orders of the Sessions Court and the Shah Alam High Court. They knew that the ATC development comprised both Block A and Block B under one master title, and the JMB was accordingly incorporated.

[67] DW1 agreed that the defendants knew the ATC development consisted of Block A and Block B.

[68] It can scarcely be disputed that the respondents knew the appellant was under a contractual obligation to deliver vacant possession to purchasers of the Tower B units and that any delay beyond the contractual deadline would result in a breach of the SPAs with exposure to LAD payments. The purchasers of Block A executed sale and purchase agreements with the appellant which set a timeframe for delivery of vacant possession and, in default, LAD. They knew that without the installation of utility works, vacant possession could not be delivered. Further, there was no evidence that the sale and purchase agreements executed between the appellant and the purchasers of Block B units were any different in those material respects.

[69] In the factual matrix of the case, the respondents either had actual knowledge or were reckless as to the inevitable consequences of their obstructive acts. The essential element of intention – which need not be predominant in a suit premised on unlawful means conspiracy – had been made out.

Breach Of Statutory Duties

[70] In advancing its contention that the LTJ had erred in holding that there was no breach of statutory duties, the appellant argued that the first defendant owes a statutory duty which extends to the proper management and maintenance of both Block A and Block B, and not just Block A simply because it had occupants whereas Block B was at that point unoccupied.

[71] The appellant stressed that the first respondent is the JMB for both Block A and Block B of the ATC Development pursuant to its certification of incorporation, and both buildings were part of one master title, copies of which had been extended to the first defendant prior to the action, and a single development order.

[72] The appellant relied on certain specific duties under the Strata Management Act 2013. In particular, the appellant relied on s. 21 which imposes a duty on the JMB, *inter alia*:

> (a) "to properly maintain and manage the building or land intended for subdivision into parcels and the common property, and keep it in a state of good and serviceable repair"
>
> (e) "to comply with any notice or order given or made by the local authority or any competent public authority requiring the abatement of any nuisance on the common property, or ordering repairs or other work to be done in respect of the common property or other improvements to the common property". and
>
> ...
>
> (i) "to do such other things as may be expedient or necessary for the proper maintenance and management of the buildings or lands intended for subdivision into parcels and the common property."

[73] The appellant referred to *Hu Sepang v. Inspector Keong On Eng & Ors* [1991] 2 CLJ 999; [1991] 2 CLJ (Rep) 739; [1991] 1 MLJ 440 where Lim Beng Choon J held that in order "to establish civil liability for a breach of statutory duty, the plaintiff must show that: (i) the injury he has suffered is within the ambit of the statute, (ii) the statutory duty imposes a liability to civil action, (iii) the statutory duty was not fulfilled, and (iv) the breach of duty has caused his injury". In that case it was further held that: "If a statute creates a duty but imposes no remedy civil or criminal for its breach, there is a presumption that a person who is injured thereby will have a right of action, for otherwise the statute would be but a pious aspiration".

[74] The appellant also referred to *Amity One Sdn Bhd v. Binjai Residency Management Corporation* [2021] CLJU 189; [2021] 1 LNS 189 where Quay Chew Soon JC (now J) held: "Being a management corporation, D's statutory role concerns primarily the preservation and upkeep of assets in the common interest of all proprietors. Its establishment is not for private gain, but for the benefit of all proprietors at large".

[75] All that taken into consideration, the starting point has to be whether there are such statutory duties imposed on the first respondent and breach of those specific duties, as alleged by the appellant.

[76] Section 21(a) and (i) of the Strata Management Act 2013 speak of proper management and maintenance of the building or land (which would relate to the preservation and upkeep of the building or land), while s. 21(e) relates to the common property. An order of the local or public authority such as the COB must relate to common property for s. 21(e) to come into play. Block B is not a common property.

[77] Further, even if these provisions can be read otherwise, they would not appear to impose any form of duty prior to delivery of vacant possession, when the duties for proper management and maintenance of Block B have yet to come into existence.

[78] Part IV of the Strata Management Act 2013 governs strata management before the existence of the management corporation, and Part V governs strata management after the existence of the management corporation.

[79] Part IV is applicable in this case. A reading of s. 7 of the Strata Management Act 2013 shows that the application of Part IV hinges on vacant possession.

[80] In short, there is no specific statutory duty imposed on the respondents which has been breached. Further, any statutory duties as listed would only arise upon or after the delivery of vacant possession.

[81] For these reasons, there is no need to consider whether a private cause of action lies for the breach of statutory duties.

Res Judicata

[82] There is then the appellant's contention that the LTJ was plainly wrong when deciding that its action was barred by *res judicata*.

[83] The LTJ held that OS 16-2014 and Suit 33-09/2014 had already been adjudicated upon, and the facts and issues in the current suit are the same or identical.

[84] In so holding, the LTJ referred to *Asia Commercial Finance (M) Bhd v. Kawal Teliti Sdn Bhd* [1995] 3 CLJ 783; [1995] 3 MLJ 189 where the Supreme Court held:

> What is *res judicata*? It simply means a matter adjudged, and its significance lies in its effect of creating an *estoppel per rem judicatam*. When a matter between two parties has been adjudicated by a Court of competent jurisdiction, the parties and their privies are not permitted to litigate once more the *res judicata*, because the judgment becomes the truth between such parties, or in other words, the parties should accept it as the truth.

[85] The respondents, in addition, argued that the appellant's claims could have been but were not raised in the earlier proceedings. They submitted that the appellant's claims were accordingly caught by the wider principle of *res judicata* as espoused by the Supreme Court:

> The doctrine of *res judicata* is not confined to causes of action or issues which the Court is actually asked to decide or has already decided. It covers also causes of action or issues or facts which, though not already decided as a result of the same not being brought forward due to negligence, inadvertence or deliberately, are so clearly part of the subject matter of the litigation and so clearly could have been raised, that it would be an abuse of the process of the Court to allow a new proceeding to be started in respect of them.

[86] Nonetheless, it is clear that the LTJ was plainly wrong in holding that the two proceedings *vide* OS 16-2014 and Suit 33-2014 were barred by *res judicata*, since the causes of action in the present dispute, founded on damage and loss due to LAD and lost sales or rental, only crystallised subsequently.

[87] There was no damage or loss suffered at the time the OS and the representative action were filed.

[88] The torts, upon which the present causes of action were framed, were inchoate at the time those proceedings were filed.

[89] As for Suit 10/2017 which was not referred to or dealt with by the LTJ, it will be recalled that the developer (the appellant here) had sued for unhindered access to the purchase of its 97 units, as well as for injunctive relief, provision of access cards, transponders and damages for loss of business. The developer obtained an *inter parte* order on 21 December 2017.

[90] Subsequently, the parties entered into a consent judgment on 1 August 2018 by which the developer was given the liberty to file the action afresh if the JMB failed to support a motion that the developer be classified as a resident.

[91] The respondents argue that the LTJ was right in holding that the present dispute *vide* BA-22NCC-45-04-2019 is barred by *res judicata*. They elaborated that the appellant could have raised the present dispute in Suit 10/2017 because, although the causes of action then and now are different, both causes of action rested on the act of restricting access.

[92] Further, the appellant pleaded that it only delivered vacant possession in 2016 instead of the contractual deadline in 2014; and, by its own evidence, had already started paying LAD to certain purchasers of Block B units by 6 June 2016 onwards. See encls. 26-32. The loss and damage had already started crystallising before Suit 10/2017 was filed.

[93] However, the present dispute is of a different nature and is not necessarily such an integral part of the earlier action that it ought to have been bundled together in the broader sense of *res judicata* as explained in *Asia Commercial Finance* (*supra*). The present suit cannot be said to be "so clearly part of the subject matter of the litigation" in the earlier suit.

[94] The subject matter of Suit 10/2017 was restriction of access to the 97 units which the appellant had purchased, whereas in the present dispute, the impugned acts relate to the restriction of access to carry out the utility works so as to fulfil the appellant's obligations under SPAs with third parties. They were different acts of denial of access, with different consequences.

[95] Be that as it may, there was no judicial determination on merits – which is the essence of a plea of *res judicata* – in Suit 10/2017. Following the Court of Appeal's decision in *Ang Game Hong & Anor v. Tee Kim Tiam & Ors* [2018] CLJU 2008; [2018] 1 LNS 2008; [2018] 4 MLJ 432, the *res judicata* principle should be applied strictly against the respondents regarding the consent judgment which terms do not touch on the subject matter of the present dispute and is not an adjudication on merits.

Whether Loss And Damage Was Proved

[96] To recapitulate, the appellant had set out two stages of conspiracy.

[97] In respect of the first stage relating to respondents' acts restricting the appellant's access to Block B (2013 to 2015), which led to late delivery of vacant possession and payment of LAD said to have amounted to RM106 million, PW3 testified that out of that amount, the sum of RM36,738,008.90 was attributable to the first respondent's conduct in restricting access to the appellant.

[98] In respect of the second stage concerning the respondents' denial of access to the appellant's personnel for the period 2016 to 2017 to show the units for purposes of sale and rental, the appellant alleged it had suffered losses of RM100 million.

[99] Nonetheless, the appellant was unable to prove its actual losses since the purported scheduled completion date in 2014, to begin with, was not supported by any documents (as may be expected in the construction industry). The SPAs which would indicate the completion dates were not produced at trial.

[100] In addition, when cross-examined, PW1 stated that he could not recall any documents and that there was no impact assessment by the appellant, its contractors and consultants which pointed to the delay caused by the JMB, although he testified that "generally there was a delay".

[101] PW1 testified that he did not know how much delay was caused by the JMB and could not satisfactorily answer how any delay impacted the appellant's completion of the project which led to the LTJ observing: "You alleged a delay. You said it is in the document, you show. You should know where the document is or where the documents are".

[102] The gap is made all the worse when it cannot be ascertained how much of the delay may be due to the replacement contractor and original contractor.

[103] On top of that, PW3 agreed that, based on the documents, it could not be confirmed that the monies referred in the payment vouchers had actually been paid out; and also agreed that there were no source/supporting documents to evidence the actual payment of LAD.

[104] The mere fact of LAD payments, even if accepted at face value, and the assertion that there was some delay, do not on their own establish causation and liability on the part of the respondents.

[105] Since there is a lack of cogent evidence about the actual scheduled completion date, and the period of delay that that is attributable to the respondents and the causative link with the LAD payments which have not been sufficiently established, the appellant has failed to prove the actual extent of its loss and damage.

[106] As for the second stage of the conspiracy (2016 to 2017), the appellant similarly failed to provide particulars and cogent evidence as to how the acts of the respondents had caused lost sales/rental in the quantum of RM100 million. The closing and reply submissions of the appellant are bereft of such particulars and cogent evidence, and this head of damages may be taken as abandoned or unproved.

[107] Although the LTJ was of the view that general damages of RM2 million would be reasonable, if the appellant had proven its case, no reasons and no calculations were provided in support. That measure can only be taken as speculative and plainly wrong.

[108] It is trite that a claimant seeking damages carries the burden of proving both liability and the quantum of damages (as made clear by the Federal Court in *Datuk Mohd Ali Hj Abdul Majid & Anor v. Public Bank Bhd* [2014] 6 CLJ 269, p. 283). However, in cases where a claimant's rights have been infringed but the actual extent of the loss or damage cannot be ascertained, an award of nominal damages may be appropriate. See the decision of the Supreme Court in *Malaysian Rubber Development Corporation Bhd v. Glove Seal Sdn Bhd* [1994] 4 CLJ 783.

[109] In the instant case, the appellant had every right to access Block B in order to discharge its contractual obligations to the purchasers of the units there, specifically, to hand over vacant possession by completing the utility works. It was obstructed by the respondents. Though the appellant was unable to prove the actual extent of its loss and damage, it had established that its rights had clearly been infringed by the respondents. For that reason, the appellant is to be awarded nominal damages of RM10,000.

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Conclusion

[110] We unanimously allow the appeal. The decision of the High Court is hereby set aside with nominal damages as decreed.

[111] Having regard to the circumstances and the culpability of the
B respective respondents, the first respondent is to pay costs of RM80,000 and the second to eighth respondents are to pay costs of RM100,000 to the appellant here and below, subject to payment of the allocatur fees.

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